IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 995 OF 2002

IN

SUMMARY SUIT NO. 3174 OF 2002

Jet Airways(India) Pvt.Ltd. .. Plaintiff

versus

Capt.M.M. Singh & ors. .. Defendants

...

Mr.Janak Dwarkadas wit Mr.Z.Andhyarujina with Mrs.V.Vaswani i/b M/s.V.V. Juris for the plaintiffs.

Mr.S.N. Naidu i/b C.R. Naidu for the defendant nos.2 and 3.

Mr.S. Rustomjee with Mr.Kapil Moye, Satyen Vora i/b M. Gandhi & Co. for the defendant no.1.

CORAM : D.G. KARNIK,J.

DATED : 16th March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This is a suit for recovery of the liquidated damages for the breach of the contract. The learned

counsel for both the parties rely upon a judgement of the Supreme Court in ONGC Vs. Saw Pipes reported in 2003(5) SCC 705. Learned counsel for the plaintiff contends that in respect of the claim for liquidated damages, the plaintiff is entitled to a decree for the entire sum claimed as liquidated damages. Learned counsel for the defendants however submit that it is open to the Court to consider whether the estimate of damages/compensation is unreasonable or is by way of a penalty. After having perused the contract and affidavit in reply, it appears to me that the issue as to whether the claim made by the plaintiff is by way of a liquidated damages or is by way of a penalty raises a triable issue.

3. The defence of the defendants cannot be said to be illusory, sham or fictitious. In the circumstances, the defendants are granted unconditional leave to defend the suit.

4. Suit shall stand transferred to the list of commercial causes. The defendants to file written statement within a period of one month.

D.G. KARNIK, J